

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Michael Subenko,

Petitioner,

v.

Civil Action No. 04-10023-GAO

Commonwealth of Massachusetts, et al.,
Respondents.

ORDER

On January 5, 2004, petitioner Michael Subenko, an inmate at MCI-Shirley, submitted the \$5 filing fee, an application to proceed without prepayment of fees and a petition for a writ of habeas corpus under 28 U.S.C. § 2254.

It is hereby ORDERED that the Clerk shall correct the case caption to reflect that the only respondent to this action is Luis Spencer, Superintendent, Massachusetts Correctional Institution - Norfolk. A writ of habeas corpus must be "directed to the person having custody of the person detained." 28 U.S.C. § 2243. Petitioner's legal custodian is the superintendent of the facility in which he is in custody, as the individual having day-to-day control over the facility in which petitioner is being detained. Vasquez v. Reno, 233 F.3d 688, 694 (1st Cir. 2000), cert. denied, sub nom. Vasquez v. Ashcroft, 122 S. Ct. 43 (2001). See Rule 2 of the Rules Governing Section 2254 Cases ("the state officer having custody of the applicant shall be named as respondent").

It is FURTHER ORDERED that pursuant to Rule 4 of the Rules Governing Section 2254 cases, the Clerk of this Court shall serve a copy of the Petition for a Writ of Habeas Corpus by mailing copies of the same, certified mail, to (1) Luis Spencer, Superintendent, Massachusetts Correctional Institution - Norfolk, P.O. Box 43, Shirley, MA 02056; AND (2) William J. Meade, Chief, Appellate Division, Attorney General for the Commonwealth of Massachusetts, One Ashburton Place, 18th Floor, Boston, MA 02108-1598.

It is FURTHER ORDERED that Respondent shall, within 20 days of receipt of this Order, file an answer (or other proper responsive pleading) to the Petition for Writ of Habeas Corpus.

SO ORDERED.

1/22/04

DATE

s/ George A. O'Toole, Jr.

UNITED STATES DISTRICT JUDGE